

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

VANESSA OCHOA, §
§
Plaintiff, §
§
v. § Case No. 4:21-cv-00829
§
JOHN BENTON MODEL FITNESS, LLC, § JURY DEMANDED
§
Defendant. §

DEFENDANT'S NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant John Benton Model Fitness, LLC (“Defendant”), hereby files this Notice of Removal to remove the civil action, originally filed in the 16th Judicial District Court of Denton County, Texas, currently pending as Case No. 21-8964-16, to the United States District Court for the Eastern District of Texas pursuant to 28 U.S.C § 1332 and 28 U.S.C § 1441. The grounds for this removal are as follows:

I.
PROCEDURAL BACKGROUND

1. Plaintiff Vanessa Ochoa (“Plaintiff”), an individual who currently resides in Los Angeles County, California, filed the Original Petition (“Petition”) against Defendant, a Texas limited liability company, alleging negligent invasion of privacy and premises liability claims on October 11, 2021 (referred to as “State Court Action”). A true and correct copy of the Original Petition is attached as **Exhibit 2**.

2. Counsel for Defendant did not agree to accept service of Plaintiff’s Petition. Plaintiff failed to properly serve the Petition on Defendant.

3. No responsive pleadings have been filed in the State Court Action. This Notice of Removal is filed subject to and without waiver of any and all of Defendant's defenses in this action.

4. The current status of the State Court Action is pending.

II.
BASIS FOR REMOVAL

5. Defendant removes this action pursuant to U.S.C § 1332 and 28 U.S.C § 1441 because it is between citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

6. This case satisfies the complete diversity requirement as Plaintiff is a California citizen and Defendant is a Texas limited liability company. *See Petition ¶ 3-4.* Because Defendant is not a citizen of the same state as Plaintiff, the parties are completely diverse.

7. Defendant has not been properly served; accordingly, 28 U.S.C § 1441 (b)(2) does not bar removal. *See, e.g., Texas Brine Company v. American Arbitration Association, 955 F.3d 482, 487 (5th Cir. 2020); See also Gibbons v. Bristol-Myers Squibb, 919 F.3d 699, 705 (2d Cir. 2019); Encompass Insurance Co. v. Stone Mansion Restaurant Inc., 902 F.3d 147, 153 (3rd Cir. 2018).*

8. The Petition filed in state court seeks "monetary relief in excess of \$1,000,000." *See Petition ¶ 36.* Thus, the amount in controversy exceeds the threshold requirement of \$75,000.00, exclusive of interest and costs.

9. On the grounds that diversity exists between the parties, the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and Plaintiff failed to properly serve the Petition, the United States District Court for the Eastern District of Texas has original jurisdiction over this action under 28 U.S.C § 1332(a) and removal is proper pursuant to 28 U.S.C § 1441.

III.
DEFENDANT HAS MET ALL PROCEDURAL REQUIREMENTS

10. Removal to the United States District Court for the Eastern District of Texas, Sherman Division, is proper, because this district and division include Denton County, which is the location of the pending State Court Action. *See* 28 U.S.C § 124(c); 28 U.S.C § 1446(a).

11. Pursuant to 28 U.S.C § 1446, this removal is timely. This Notice of Removal is filed within thirty days of October 11, 2021, the date Plaintiff filed her Petition in state court.

12. Pursuant to 28 U.S.C § 1446(a), copies of all process, pleading, and orders served in the State Court Action, are attached hereto as **Exhibits 1 through 5**.

13. In accordance with 28 U.S.C § 1446(d), after filing this Notice of Removal, Defendant will promptly: (1) file a copy of this Notice of Removal with the Clerk of the 16th Judicial District Court of Denton County, Texas, in Case No. 21-8964-16; and (2) shall give Plaintiff's counsel written notice of the filing of this Notice of Removal.

14. Plaintiff has not demanded a jury trial.

IV.
CONCLUSION

WHEREFORE, for the foregoing reasons, Defendant therefore gives notice that the above-entitled action is removed from the 16th Judicial District Court for Denton County to the United States District Court for the Eastern District of Texas.

Dated: October 15, 2021

Respectfully submitted,

PLATT CHEEMA RICHMOND PLLC

/s/ Matthew C. Acosta

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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned counsel for Defendant, hereby certifies that a copy of the foregoing document was served on counsel of record on October 15, 2021 by electronic service.

/s/ Matthew C. Acosta

MATTHEW ACOSTA